

Message Text

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ACTION EB-06

INFO OCT-01 ARA-06 EUR-08 IO-04 ISO-00 L-01 FRB-01 OMB-01

TAR-01 SP-02 SWF-01 AGR-05 AID-05 CIAE-00 COME-00

INR-05 LAB-01 NSAE-00 OIC-01 RSC-01 SIL-01 STR-01

TRSE-00 CIEP-01 CEA-01 AF-04 EA-06 NEA-06 SS-15 NSC-05

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TO SECSTATE WASHDC IMMEDIATE 6425

INFO USMISSION GENEVA

USMISSION EC BRUSSELS

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AMEMBASSY MEXICO

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TREASURY PASS BRADFIELD

E.O. 11652: N/A

TAGS: UNCTAD, EGEN, ETRD

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES

REF: (A) USUN 4067 (B) STATE 225553

1. WE APPRECIATE INSTRUCTIONS CONTAINED REFTEL (B).
AS REPORTED SEPTTEL, WHILE CANADIAN-AUSTRALIAN PROPOSAL
REPORTED REFTEL (A) IN ITS FIRST SENTENCE DOES CONTAIN
THE LANGUAGE OF "POSSESSION, USE AND DISPOSAL", WE ARE
PRESSING THE G-77 TO RETURN TO THE LANGUAGE PROVISIONALLY
AGREED AT GENEVA FOR THIS SENTENCE.

2. WASHINGTON WILL NOTE THAT CANADIAN-AUSTRALIAN
PROPOSAL MEETS ITS POINTS ON EXHAUSTION OF LOCAL REMEDIES
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AND INVESTMENT AGREEMENTS.

3. WE ARE REASSURED TO KNOW THAT WASHINGTON COULD LIVE WITH LANGUAGE "UNLAWFUL PRESSURE" AND ACCORDINGLY WOULD ASSUME THAT IT COULD LIVE THE MORE EASILY WITH "UNLAWFUL COERCION". IN ANY EVENT, WE HAVE TAKEN CARE TO HAVE THE CANADIAN-AUSTRALIAN PROPOSAL CHARACTERIZED AS SUCH AND NOT TO COMMIT THE USG TO ITS "COERCION" REFERENCE.

4. WE APPRECIATE THAT WASHINGTON APPREHENDS THAT "UNLAWFUL" QUALIFICATION OF COERCION OR PRESSURE IS LIKELY TO DISAPPEAR. IF CURRENT NEGOTIATIONS GET OVER THE GREAT HUMP OF COMPENSATION AND REACH THIS PROVISION-- WHICH IS UNLIKELY -- WE AGREED THAT WE SHALL PROBABLY NOT BE ABLE TO HOLD "UNLAWFUL". IN VIEW OF FREELAND (UK), AND, APPARENTLY, ALL OTHER GROUP B REPRESENTATIVES, HOWEVER, USG WOULD DO WELL TO ACCEPT (PROVIDED THAT ART. 2 OTHERWISE IS SATISFACTORY): "IN RESPECT OF THE FOREGOING RIGHTS, ALL STATES SHALL FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS, INCLUDING THOSE OBLIGATING THEM TO REFRAIN FROM THE EXERCISE OF ANY FORM OF COERCION". FREELAND'S ARGUMENT IS AS FOLLOWS. FIRST, REFERENCE TO "INTERNATIONAL OBLIGATIONS" IS VITAL TO US, AND WE ARE UNLIKELY TO GET IT WITHOUT REFERENCE TO COERCION. SECOND, COERCION, AS HERE DRAFTED, REFERS TO COERCION EXERCISED BY HOST STATES AS WELL AS BY STATES WHOSE NATIONALS ARE EXPROPRIATED. THIRD, COERCION COVERS NOT ONLY EXPROPRIATION, BUT, IF WE ACCEPT G-77 LANGUAGE ON "USE AND DISPOSAL," THE SORT OF COERCION THE ARABS EXERTED IN THEIR OIL BOYCOTT. FOURTH, DEFINING COERCION BY THE PRECEDING REFERENCE TO "INTERNATIONAL OBLIGATIONS" SHOWS NOT THAT ALL FORMS OF PRESSURE -- SUCH AS THE HICKENOPPER AMENDMENT, VOTING AGAINST LOANS, ETC. -- IS INTERDICTED BUT RATHER THAN ONLY SUCH COERCION AS INTERNATIONAL OBLIGATIONS DEBAR IS PROHIBITED. FIFTH, IF ONE WERE TO SEEK AN AUTHORITATIVE DEFINITION OF INTERDICTED COERCION, ONE WOULD LOOK TO THE FRIENDLY RELATIONS DECLARATION: MEASURES "TO COERCE ANOTHER STATE IN ORDER TO OBTAIN FROM IT THE SUBORDINATION OF THE EXERCISE OF ITS SOVEREIGN RIGHTS..." THERE IS NO SOVEREIGN LIMITED OFFICIAL USE

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RIGHT TO EXPROPRIATE IN VIOLATION OF INTERNATIONAL LAW.

5. USDEL FINDS THE FOREGOING ARGUMENTS COGENT, AND ACCORDINGLY RENEWS ITS REQUEST FOR AUTHORITY TO ACCEPT THE CANADIAN-AUSTRALIAN PROPOSAL BOTH AS DRAFTED AND, IF NEEDS BE, WITHOUT THE WORD "UNLAWFUL". THIS IS NOT TO SAY THAT WE BELIEVE IT LIKELY WE SHALL NEED THIS AUTHORITY, FOR WE HAVE THE STRONGEST DOUBT THAT GROUP B CAN AGREE

WITH G-77 EITHER ON COMPENSATION, OR ON ANY VERSION OF
SUBPARA. 3 OF ART. 2 DISCUSSED IN THIS MESSAGE. MOREOVER,
WE HAVE ALREADY WARNED OUR COLLEAGUES IN GROUP B THAT
WASHINGTON GIVES SIGNS OF HAVING DEFINITIVE DIFFICULTY
WITH THE COERCION REFERENCE. BUT IN RESPONSE TO THAT
WARNING, WASHINGTON SHOULD KNOW THAT REMAINDER OF GROUP B
FINDS SUCH DIFFICULTY MISPLACED, AND THAT THE USDEL
BELIEVES THAT OBLIGING IT TO TORPEDO THE CANADIAN-
AUSTRALIAN FORMULA ON THIS COUNT WILL BE COUNTER-
PRODUCTIVE IN MULTIPLE WAYS.

6. WE HAVE INFORMED CANADIAN DEL THAT FORMULA CONTAINED
IN PAR. 7 OF REFTTEL (A) IS UNACCEPTABLE.
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